

By: Huffman

S.B. No. 1825

A BILL TO BE ENTITLED

AN ACT

relating to the eligibility of a defendant charged with certain sex offenses for judge-ordered community supervision.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 3(b), Article 42.12, Code of Criminal Procedure, is amended to read as follows:

(b) In a felony case the minimum period of community supervision is the same as the minimum term of imprisonment applicable to the offense and the maximum period of community supervision is, subject to the extensions provided by Section 22:

(1) 10 years, for a felony other than a third degree felony described by Subdivision (2); and

(2) five years, for the following third degree felonies:

(A) a third degree felony under Title 7, Penal Code~~[, other than an offense under Section 33.021(c), Penal Code]~~; and

(B) a third degree felony under Chapter 481, Health and Safety Code.

SECTION 2. Section 3g(a), Article 42.12, Code of Criminal Procedure, as amended by Chapters 405 (S.B. 877) and 593 (H.B. 8), Acts of the 80th Legislature, Regular Session, 2007, is reenacted and amended to read as follows:

(a) The provisions of Section 3 of this article do not

1 apply:

2 (1) to a defendant adjudged guilty of an offense  
3 under:

4 (A) Section 19.02, Penal Code (Murder);

5 (B) Section 19.03, Penal Code (Capital murder);

6 (C) Section 21.11(a)(1), Penal Code (Indecency  
7 with a child);

8 (D) Section 20.04, Penal Code (Aggravated  
9 kidnapping);

10 (E) Section 22.021, Penal Code (Aggravated  
11 sexual assault);

12 (F) Section 29.03, Penal Code (Aggravated  
13 robbery);

14 (G) Chapter 481, Health and Safety Code, for  
15 which punishment is increased under:

16 (i) Section 481.140, Health and Safety  
17 Code; or

18 (ii) Section 481.134(c), (d), (e), or (f),  
19 Health and Safety Code, if it is shown that the defendant has been  
20 previously convicted of an offense for which punishment was  
21 increased under any of those subsections;

22 (H) Section 22.011, Penal Code (Sexual assault);

23 [~~or~~]

24 (I) Section 22.04(a)(1), Penal Code (Injury to a  
25 child, elderly individual, or disabled individual), if the offense  
26 is punishable as a felony of the first degree and the victim of the  
27 offense is a child; [~~or~~]

1                    (J) [~~(I)~~] Section 43.25, Penal Code (Sexual  
2 performance by a child);

3                    (K) Section 43.26, Penal Code (Possession or  
4 promotion of child pornography); or

5                    (L) Section 33.021, Penal Code (Online  
6 solicitation of a minor); or

7                    (2) to a defendant when it is shown that a deadly  
8 weapon as defined in Section 1.07, Penal Code, was used or exhibited  
9 during the commission of a felony offense or during immediate  
10 flight therefrom, and that the defendant used or exhibited the  
11 deadly weapon or was a party to the offense and knew that a deadly  
12 weapon would be used or exhibited. On an affirmative finding under  
13 this subdivision, the trial court shall enter the finding in the  
14 judgment of the court. On an affirmative finding that the deadly  
15 weapon was a firearm, the court shall enter that finding in its  
16 judgment.

17                    SECTION 3. Section 499.027(b), Government Code, is amended  
18 to read as follows:

19                    (b) An inmate is not eligible under this subchapter to be  
20 considered for release to intensive supervision parole if:

21                    (1) the inmate is awaiting transfer to the  
22 institutional division, or serving a sentence, for an offense for  
23 which the judgment contains an affirmative finding under Section  
24 3g(a)(2), Article 42.12, Code of Criminal Procedure;

25                    (2) the inmate is awaiting transfer to the  
26 institutional division, or serving a sentence, for an offense  
27 listed in one of the following sections of the Penal Code:

- 1 (A) Section 19.02 (murder);
- 2 (B) Section 19.03 (capital murder);
- 3 (C) Section 19.04 (manslaughter);
- 4 (D) Section 20.03 (kidnapping);
- 5 (E) Section 20.04 (aggravated kidnapping);
- 6 (F) Section 21.11 (indecent with a child);
- 7 (G) Section 22.011 (sexual assault);
- 8 (H) Section 22.02 (aggravated assault);
- 9 (I) Section 22.021 (aggravated sexual assault);
- 10 (J) Section 22.04 (injury to a child or an
- 11 elderly individual);
- 12 (K) Section 25.02 (prohibited sexual conduct);
- 13 (L) Section 25.08 (sale or purchase of a child);
- 14 (M) Section 28.02 (arson);
- 15 (N) Section 29.02 (robbery);
- 16 (O) Section 29.03 (aggravated robbery);
- 17 (P) Section 30.02 (burglary), if the offense is
- 18 punished as a first-degree felony under that section;
- 19 (Q) Section 43.04 (aggravated promotion of
- 20 prostitution);
- 21 (R) Section 43.05 (compelling prostitution);
- 22 (S) Section 43.24 (sale, distribution, or
- 23 display of harmful material to minor);
- 24 (T) Section 43.25 (sexual performance by a
- 25 child);
- 26 (U) Section 46.10 (deadly weapon in penal
- 27 institution);

1 (V) Section 15.01 (criminal attempt), if the  
2 offense attempted is listed in this subsection;

3 (W) Section 15.02 (criminal conspiracy), if the  
4 offense that is the subject of the conspiracy is listed in this  
5 subsection;

6 (X) Section 15.03 (criminal solicitation), if  
7 the offense solicited is listed in this subsection; ~~[or]~~

8 (Y) Section 21.02 (continuous sexual abuse of  
9 young child or children);

10 (Z) Section 33.021 (online solicitation of a  
11 minor); or

12 (AA) Section 43.26 (possession or promotion of  
13 child pornography); or

14 (3) the inmate is awaiting transfer to the  
15 institutional division, or serving a sentence, for an offense under  
16 Chapter 481, Health and Safety Code, punishable by a minimum term of  
17 imprisonment or a maximum fine that is greater than the minimum term  
18 of imprisonment or the maximum fine for a first degree felony.

19 SECTION 4. Section 508.145(d), Government Code, is amended  
20 to read as follows:

21 (d) An inmate serving a sentence for an offense described by  
22 Section 3g(a)(1)(A), (C), (D), (E), (F), (G), (H), ~~[or]~~ (I), (J),  
23 (K), or (L), Article 42.12, Code of Criminal Procedure, or for an  
24 offense for which the judgment contains an affirmative finding  
25 under Section 3g(a)(2) of that article, is not eligible for release  
26 on parole until the inmate's actual calendar time served, without  
27 consideration of good conduct time, equals one-half of the sentence

1 or 30 calendar years, whichever is less, but in no event is the  
2 inmate eligible for release on parole in less than two calendar  
3 years.

4 SECTION 5. Section 508.149(a), Government Code, is amended  
5 to read as follows:

6 (a) An inmate may not be released to mandatory supervision  
7 if the inmate is serving a sentence for or has been previously  
8 convicted of:

9 (1) an offense for which the judgment contains an  
10 affirmative finding under Section 3g(a)(2), Article 42.12, Code of  
11 Criminal Procedure;

12 (2) a first degree felony or a second degree felony  
13 under Section 19.02, Penal Code;

14 (3) a capital felony under Section 19.03, Penal Code;

15 (4) a first degree felony or a second degree felony  
16 under Section 20.04, Penal Code;

17 (5) an offense under Section 21.11, Penal Code;

18 (6) a felony under Section 22.011, Penal Code;

19 (7) a first degree felony or a second degree felony  
20 under Section 22.02, Penal Code;

21 (8) a first degree felony under Section 22.021, Penal  
22 Code;

23 (9) a first degree felony under Section 22.04, Penal  
24 Code;

25 (10) a first degree felony under Section 28.02, Penal  
26 Code;

27 (11) a second degree felony under Section 29.02, Penal

1 Code;

2 (12) a first degree felony under Section 29.03, Penal  
3 Code;

4 (13) a first degree felony under Section 30.02, Penal  
5 Code;

6 (14) a felony for which the punishment is increased  
7 under Section 481.134 or Section 481.140, Health and Safety Code;

8 (15) an offense under Section 43.25, Penal Code; ~~[or]~~

9 (16) an offense under Section 21.02, Penal Code;

10 (17) an offense under Section 33.021, Penal Code; or

11 (18) an offense under Section 43.26, Penal Code.

12 SECTION 6. The change in law made by this Act applies only  
13 to an offense committed on or after the effective date of this Act.  
14 An offense committed before the effective date of this Act is  
15 covered by the law in effect when the offense was committed, and the  
16 former law is continued in effect for that purpose. For purposes of  
17 this section, an offense was committed before the effective date of  
18 this Act if any element of the offense occurred before that date.

19 SECTION 7. The change in law made by this Act in amending  
20 Sections 499.027(b), 508.145(d), and 508.149, Government Code,  
21 applies only to a person who is released on parole or to mandatory  
22 supervision for an offense committed on or after the effective date  
23 of this Act. A person who is released on parole or to mandatory  
24 supervision for an offense committed before the effective date of  
25 this Act is governed by the law in effect on the date the offense was  
26 committed, and that law is continued in effect for that purpose.  
27 For purposes of this section, an offense is committed on or after

1 the effective date of this Act if any element of the offense occurs  
2 on or after the effective date of this Act.

3 SECTION 8. This Act takes effect September 1, 2009.